United Nations CTOC/COP/WG.7/2017/L.1

Conference of the Parties to the United Nations Convention against Transnational Organized Crime

Distr.: Limited
11 September 2017

Original: English

Working Group on the Smuggling of Migrants
Vienna, 11-13 September 2017

Draft Report

I. Introduction

1. Pursuant to resolution 5/3, adopted by the Conference of the Parties to the United Nations Convention against Transnational Organized Crime at its fifth session, an open-ended intergovernmental interim working group on the smuggling of migrants was established to advise and assist the Conference in the implementation of its mandate with regard to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime. The previous sessions of the Working Group were held from 30 May to 1 June 2012, from 11 to 13 November 2013 and from 18 to 20 November 2015.

2. In its resolution 7/1, entitled "Strengthening the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto", the Conference decided, inter alia, that the Working Group on Smuggling of Migrants would be a constant element of the Conference of the Parties, forwarding its reports and recommendations to the Conference, and encouraged the working groups of the Conference to consider meeting on an annual basis, as needed, and to hold their meetings consecutively, in order to ensure the effective use of resources.

3. In its resolution 8/2, the Conference decided to continue the process of establishing the mechanism for the review of the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto based on the recommendations contained in the report on the open-ended intergovernmental meeting to explore all options regarding an appropriate and effective review mechanism for the United Nations Convention against Transnational Organized Crime and the Protocols thereto, held in Vienna on 6 and 7 June 2016. In the same resolution, the Conference also decided to elaborate specific procedures and rules for the functioning of the review mechanism for consideration and adoption by the Conference at its ninth session, which was to be guided by the principles and characteristics set out in Conference resolution 5/5.

4. Furthermore, in resolution 8/2, the Conference decided that the review mechanism would progressively address all the articles of the Convention and the Protocols thereto for each of the instruments that States parties are parties to, grouped in thematic clusters in accordance with the content of their provisions and that, in order to review each thematic cluster of articles, the relevant working group would, in the next two years, with the assistance of the Secretariat, define a short, precise and focused self-assessment questionnaire.

Please recycle

II. Recommendations

5. At its meeting held in Vienna from 11 to 13 September, the Working Group on the Smuggling of Migrants adopted the recommendations presented below.

A. Recommendations on specific topics

1. Use of the United Nations Convention against Transnational Organized Crime to address challenges relating to the smuggling of migrants

Recommendation 1

States Parties are encouraged to strengthen implementation of United Nations Convention against Transnational Organized Crime and the Smuggling of Migrants Protocol, especially with reference to corruption, money laundering and confiscation of the proceeds of crime.

Recommendation 2

States are encouraged to enhance efforts to confiscate the proceeds of crime related to migrant smuggling, and are encouraged to address the linkages between the profits arising from migrant smuggling and other forms of crime.

Recommendation 3

States may wish to consider linkages between terrorism and organized criminal groups involved in the smuggling of migrants.

Recommendation 4

States are encouraged to set up mechanisms whereby information on smuggling of migrants cases can be quickly and effectively shared between authorities on a national, regional and international basis.

Recommendation 5

States should ensure that data is gathered, analysed and shared in investigations and prosecutions of smugglers from a broad range of sources including data from phones, computers, videos, pictures, and e-mail, and data regarding financial flows.

Recommendation 6

States should ensure that measures are in place to best facilitate the gathering of evidence in migrant smuggling cases, including through special protection for witnesses throughout the investigative and judicial process.

Recommendation 7

States should, including through the delivery of technical assistance, seek to train practitioners in the use of formal and informal legal cooperation, and the use of United Nations Convention against Transnational Organized Crime as a legal basis for extradition and mutual legal assistance, when combatting the smuggling of migrants.

Recommendation 8

States are encouraged to establish joint investigation teams through bilateral or multilateral agreements and to make use of special investigative techniques when combatting the smuggling of migrants.

2. Examination of the "financial and material benefit" aspect of the definition of smuggling of migrants

B. General recommendations

III. Summary of deliberations

IV. Organization of the meeting

A. Opening of the meeting

6. The fourth meeting of the Working Group on the Smuggling of Migrants was held in Vienna from 11 to 13 September 2017. Five meetings were held during the session.

7. The meeting was opened by Francesco Testa (Italy), Chair of the Working Group. He addressed the meeting and presented an overview of the mandate of the Working Group, its objectives and the subjects under its consideration.

B. Statements

8. A general introductory statement was made by the Secretariat under agenda item 2.

9. Under agenda items 3 and 4, with the Chair presiding, the discussion was led by the following panellists: Mr. Wanchai Roujanavong (Thailand), Mr. Alejandro Martínez Peralta (Mexico), Colonel Gerald Tatzgern (Austria) and Dr. Anne Gallagher (Australia).

10. Under agenda items 2, statements were made by representatives of the following parties to the Smuggling of Migrants Protocol: Bahamas, Chile, European Union, Greece, Guatemala, India, Indonesia, Iraq, Italy, Japan, Mexico, Netherlands, Nigeria, Philippines, South Africa, Turkey, United Kingdom of Great Britain and Northern Ireland, Uruguay.

11. Colombia, a State that is not party or signatory to the Smuggling of Migrants Protocol also made a statement.

C. Adoption of the agenda and organization of work

12. At its first meeting, on 11 September 2017, the Working Group adopted by consensus the following agenda:

1. Organizational matters:
   (a) Opening of the meeting;
   (b) Adoption of the agenda and organization of work.
2. Use of the United Nations Convention against Transnational Organized Crime to address challenges relating to the smuggling of migrants.
3. Examination of the "financial and material benefit" aspect of the definition of smuggling of migrants.
4. Preparation of the questionnaire to review the implementation of the Smuggling of Migrants Protocol.
5. Other matters.
6. Adoption of the report.

D. Attendance

13. The following States parties to the Smuggling of Migrants Protocol, supplementing the United Nations Convention against Transnational Organized Crime were represented in the Working Group: Afghanistan, Algeria, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Belarus, Belgium, Burundi, Canada, Chile, Côte d'Ivoire, Croatia, Czechia, Cuba, Ecuador, El Salvador, Estonia, France, Germany, Greece, Guatemala, India, Indonesia, Iraq, Italy, Japan, Kuwait, Lebanon, Luxembourg, Malta, Mexico, Myanmar, Namibia, New Zealand, Nigeria, Norway, Oman, Panama, Paraguay, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Serbia, Slovakia, South Africa, Spain, Tunisia, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela (Bolivarian Republic of).

14. The European Union, a regional economic integration organization that is a party to the Smuggling of Migrants Protocol, was represented at the meeting.

15. The following States signatories to the Smuggling of Migrants Protocol were represented by observers: Bolivia (Plurinational State of), Sri Lanka, Thailand.

16. The following States that are not parties or signatories to the Smuggling of Migrants Protocol were represented by observers: China, Colombia, Iran (Islamic Republic of), Israel, Jordan, Morocco, Pakistan, Singapore, State of Palestine, Sudan, Viet Nam, Yemen, Zimbabwe, .

17. The Office of the United Nations Department of Political Affairs was represented by an observer.

18. The following intergovernmental organizations were represented by observers: European Union Agency for Fundamental Rights, International Centre for Migration Policy Development (ICMPD), International Organization for Migration (IOM), The Organization for Security and Co-operation in Europe (OSCE).

19. A list of participants is contained in document CTOC/COP/WG.7/2017/INF.1/Rev.1.

E. Documentation

20. The Working Group had before it the following:

(a) Annotated provisional agenda (CTOC/COP/WG.7/2017/1);

(b) Draft questionnaire prepared by the Secretariat for the review of the implementation of the Smuggling of Migrants Protocol, in accordance with Conference resolution 8/2 (CTOC/COP/WG.7/2017/2);

(c) Background paper prepared by the Secretariat on the use of the United Nations Convention against Transnational Organized Crime to address challenges relating to the smuggling of migrants (CTOC/COP/WG.7/2017/3);

(d) Background paper prepared by the Secretariat on the examination of the "financial and material benefit" aspect of the definition of smuggling of migrants (CTOC/COP/WG.7/2017/4).

V. Adoption of the report

21. On 13 September 2017, the Working Group adopted the present report on its meeting.